

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.341 of 1988

Most.Nilam Devi @Neelam Shina widow of Late Dinesh Singh resident of village Balua police station, Maner District – Patna

.... Appellant/s

Versus

1. Lakshman Singh @ Laxuman Singh son of Late Sheo Narian Singh

2. Abhimanyu Singh (Minor)

3. Dharmendra Singh (Minor)

Both minor sons of Lakshman Singh @ Laxuman Singh, under the guardianship of their father Lakshman Singh @ Laxuman Singh, who is their well wisher

4. (i) Mosst. Dhanrajo Devi w/o- Late Rameshwar Singh, Village +Post Office – Balua. P.S.- Maner, District – Patna

(ii) Smt. Sangita Devi, daughter of R. Singh and wife of Sanjay Kumar Singh resident of Mohranpur, P.O. +P.S. – Bihta, District – Patna

5. Binay Singh

6. Dilip Singh

Both sons of Rameshwar Singh

All residents of village Balua, post Office – Balua, Police Station – Maner, District – Patna

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ratneshwar Prasad Singh, Advocate

Mr. Kamal Prasad Roy, Advocate

Mr. Madan Prasad Singh, Advocate.

For the Respondent/s : Mr. Uma Shankar Prasad, Senior Advocate

Mr. Ramesh Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE SHAILESH KUMAR SINHA

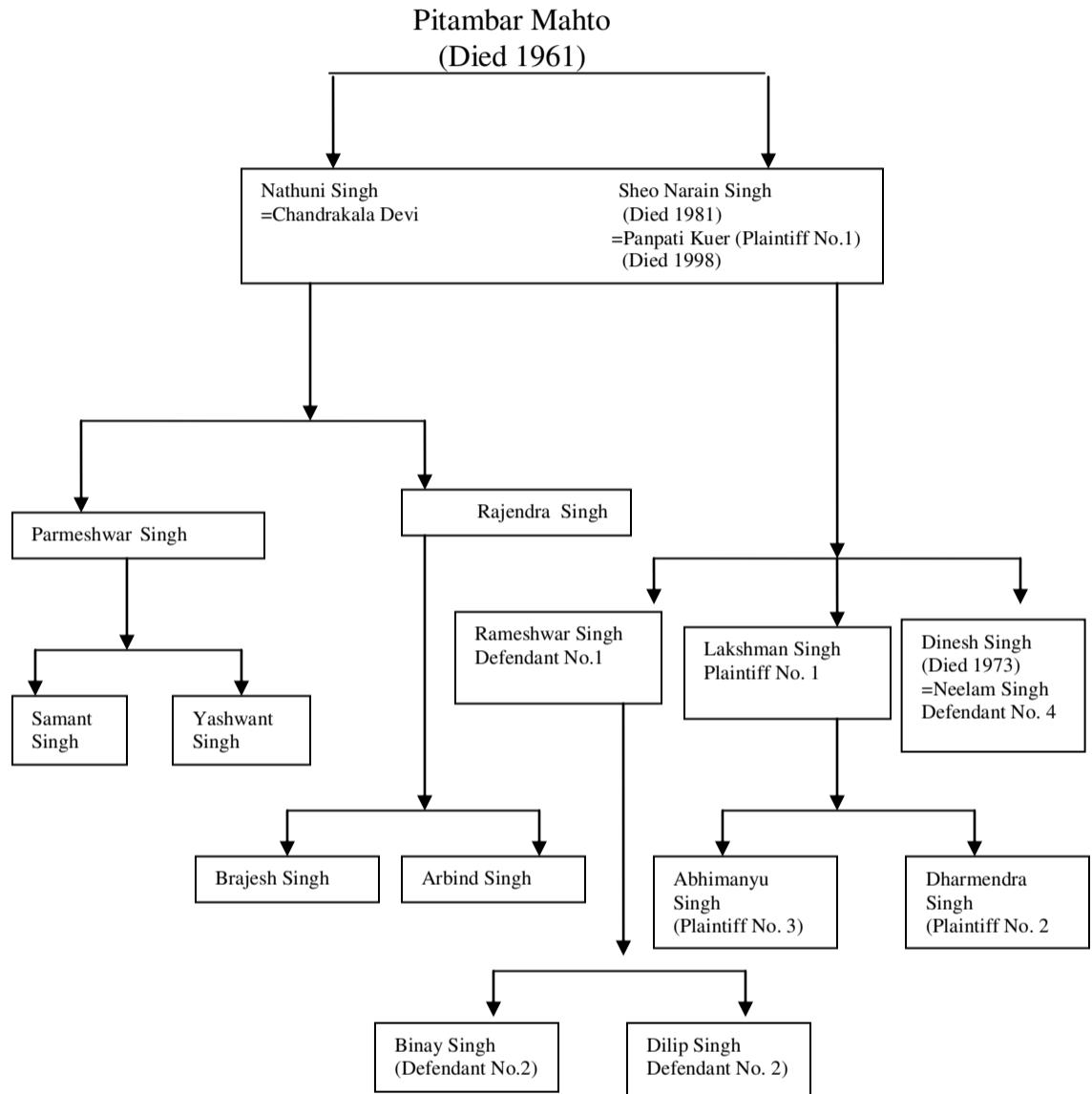
C.A.V JUDGMENT

Date: 17 -04-2012

The appeal is directed against the judgement and decree dated 4th of June 1988 passed by the 2nd Subordinate Judge, Patna in Title Partition Suit No. 220 of 1986 whereby the Appellant (Defendant No.4) being aggrieved with the determination of her share in the joint family property as also on the question of validity of the gift executed by the Plaintiff No. 1, has preferred this appeal.

In order to appreciate properly the controversy

between the parties, it would be fruitful to reproduce the admitted genealogical table of the family.



The court below upon considering the evidence on the record determined the share of the Plaintiff No. 1 being 37.50 paisa, Plaintiff No. 2 alongwith his sons Plaintiff No.3 and 4 would get 25 paisa and the Defendant No.1 with his two sons Defendant No.2 and 3 would get 25 paisa and the Defendant No. 4, the widow of Dinesh Singh would be getting 12.50 paisa. As

regard the deed of gift dated 11.10.1984 (Exhibit -A) the court below held that the deed of gift executed by the Plaintiff No. 1 is valid to the extent of her share in the joint family property. The Defendant No. 4, the appellant assailed the determination of share as well as on the question of gift executed by the Plaintiff No.1.

The details of the suit land as also the correctness of the genealogical table as mentioned above are not in dispute. As such, the details, as recorded in the judgement of the court below are not restated.

During the pendency of this appeal, the Plaintiff No. 1 (respondent no. 1) died, as such, the determination of share between the respective parties gets altered is not in dispute.

Mr. Ratneshwar Prasad Singh, learned counsel appearing for the appellant submits that admittedly the family of Shiv Narain Singh and his wife Panpati Kuer (Plaintiff No.1) as also the Defendant Nos. 1 and 2 and the deceased son of Shiv Narain Singh namely, Dinesh Singh have the share of 20 paisa in the joint family property. After the death of Dinesh Singh in the year 1973, his 20 paisa share got divided between his widow Nilam Singh (Appellant) and his mother Panpati Kuer (Plaintiff No.1) with 10 paisa each. As a result, Plaintiff No. 1 got the share of 30 Paisa and the widow Nilam Singh got the share of 10 paisa. Later Shiv Narain Singh died in the year 1981 consequently his 20 paisa share in the property devolved on his widow Panpati Kuer and the family of his three sons namely, Defendant Nos. 1,2 and 4. Accordingly, the widow Nilam Singh got share of 15 paisa and the

w
No

widow of Shiv Narain Singh got the share of 35 paisa. He further submits that during the pendency of this appeal, Plaintiff No. 1 Panpati Kuer died and as such, her share of 35 paisa got re-distributed between the three branches of her son i.e. Defendant Nos. 1,2 and 4 the widow of the deceased son Dinesh Singh and as such, the appellant, Nilam Singh got share of 15 paisa + 11.6 paisa (1/3 share on death of Panpati Kuer) in total 26.6 paisa and the share of the family of the Defendant No. 1 and Plaintiff No. 2 gets the share of 36.6 paisa each.

On the other hand, learned counsel for the respondent submits that on the death of Shiv Narain Singh his 20 paisa share although would be distributed with 5 paisa each between his widow Panpati Kuer (Plaintiff No.1), Ramesh Singh (Defendant No.1), Laxman Singh (plaintiff No.2), however, 5 paisa share of the deceased Dinesh Singh would be re-distributed half and half between the appellant, Nilam Singh and Panpati Kuer the mother of her deceased son Dinesh Singh. In the other words on the death of Shiv Narain Singh, the appellant Nilam Singh would be getting 2.5 paisa only. Therefore, the bone of contention is the division of 5 paisa between the appellant Nilam Singh and Panpati Kuer on the death of Shiv Narain Singh.

On considering the submissions of the parties, it would appear that except the distribution of 5 paisa of share after the death of Shiv Narain Singh, the rest of the entitlement of share is not in dispute. Learned counsel for the appellant submits that after the death of Dinesh Singh his widow stepped into the shoe

of her deceased husband and as such, she is entitled to get equal share alongwith the two brothers of her deceased husband, as such, she will also entitled to get 5 paisa share on the death of Shiv Narain Singh.

In my opinion, the submissions made on behalf of the appellant is well founded and is in tune with the law. It is not in dispute that during the pendency of this appeal, the Plaintiff No. 1 died and as such, her share 35 paisa and not 37.5 paisa as held by the court below shall get distributed equally among Defendant Nos. 1 and 2 and the appellant, Nilam Singh. Accordingly , it is held that the appellant is entitled to get 26.66 paisa and branch of Defendant no. 1 and Plaintiff No. 2 is entitled to get 36.6 paisa each.

The share as determined by the court below is accordingly, modified to the extent, as mentioned above.

With respect to the validity of gift, learned counsel for the appellant submits that in absence of any independent source of income of Panpati Kuer when the family and the properties are joint, any transfer by any member of the joint family either by way of sale, gift or in any other manner with respect to the joint family property, is not permissible in law. At the same time, any acquisition of property in the name of any individual member of the joint family, having admittedly no source of income, cannot be held to be his or her personal acquisition. It is further submitted that in the instant case, the properties were claimed to have been acquired in the name of Plaintiff No. 1 as

also in the name of minors of the family although admittedly having no independent source of income for such individual acquisition, the property cannot be held to be self-acquired property of Plaintiff No. 1 Panpati Kuer or the minors. Therefore, entire property was a joint family property as such, the gift or any alienation of the joint family property which were acquired through different sale deeds vide Exhibit -6 series. It is further submitted that in a partition suit, all the contesting parties having led their respective evidences, the question of onus on any party to show whether the property is joint or self-acquired loses all its importance. The issue has to be decided on the evidence on record. In the instant case, admittedly, no evidences have been adduced to substantiate that the gifted property as per the gift dated 11.10.1984 (Exhibit -A) as also the property sold by the plaintiff no. 1 that those were her self-acquisition from her independent source of income, as such, the gift was invalid. Panpati Kuer (plaintiff no. 1) could not have validly executed the above deed of gift, the findings of the trial court that the gift is valid to the extent of her share in absence of any defined share not sustainable in law. On the other hand, learned counsel for the respondent supports the findings of the court below and submits that in fact appellant has not challenged the gift in her written statement and as such, now she cannot be allowed to challenge the trial court findings for having not filed any cross-objection or separate appeal, as such, it does not call for any interference. Moreso, it is submitted that gift of undivided share is

also permissible and in this regard he refers the decision of the Apex Court in the case of Kali Prasad Singh Vs. Ram Prasad AIR 1974 SC Page 148 and in the case of K. Balakrishnan Vs. K. Kamalam AIR 2004 SC Page 1257.

On considering the rival submissions of the parties and on perusal of the decisions as referred above, it would appear that the gift of a property even though the family in joint can be permitted with respect to the undivided share of the donor in the joint family provided the share is defined as to what would be the share of the donor. In the aforesaid two decisions the donors of the gifted property had definite share, as such, aforesaid decisions are of no help.

In the case in hand, the share of the members of the joint family having not defined as on the date of the execution of the deed of gift (Exhibit-A). The execution of the gift, in question, by Panpati Kuer with respect to the specific joint family property cannot validly stand in law. The objection of the learned counsel for the respondent that the gift having been not challenged although the matter with respect to the gift was raised during the arguments in the trial court and discussed by the court. Nonetheless, the issue of gift cannot be validity challenged at the instance of the appellant in this appeal. It is well settled in law that any party to appeal may support the findings of the trial court in his favour and can also assail the findings which are against him, even though, he may not have filed any cross objection or a separate appeal. Therefore, in my opinion, on the

available evidence on the record , the appellant is well within its right to assail the whole or part of the findings which are against him. The submission of the learned counsel for the respondent contrary to the above is not acceptable. It is accordingly rejected. Now, in view of the admitted position that the family as also the property remained joint, therefore, in absence of any evidence on the record that Panpati Kuer had any independent source of income for independent acquisition and in absence of any defined share of the members in the joint family property, the execution of deed of gift dated 10.11.1984 (Exhibit-A) cannot be held to be valid in law. Accordingly, the findings of the court below to the effect that the gift is valid to the extent of the share of plaintiff, Panpati Kuer being not tenable in law is set aside.

In the result, in view of the discussions and the reasons above, the share of the appellant is determined and held that she is entitled to get 26.66 paisa, Defendant No. 1 and 2 is entitled to get share of 36.66 paisa each. As regards the deed of gift dated 10.11.1984 (Exhibit-A) as held above is declared invalid in law, findings of the court below with respect to the aforesaid deed of gift is set aside. The share is held and determined as indicated above. The contrary findings of the court below is set aside. Accordingly, the judgement and decree is modified to the extent indicated above.

The appeal stands disposed of as above. No cost.

Patna High Court
N.A.F.R./Jagdish-

(Shailesh Kumar Sinha, J)